

Remarks

Claims 1-7 and 9-17 are currently pending in the Application.

Claim Amendments

This response amends Claims 1-2 and 9-10 to clarify the language of the claims. Support for the amendments can be found, for example, in Figure 2 and the corresponding text in the specification. No new matter has been added.

35 U.S.C. §102(b) rejection in view of Fitzgerald (U.S. Patent No. 4,435,178)

Claims 1-7, 9, 12 and 14-17 stand rejected under 35 U.S.C. §102(b) as being anticipated by Fitzgerald. Applicants respectfully disagree.

The Examiner is reminded that “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” MPEP 2131 quoting *Verdegaal Bros. V. Union Oil Co, of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The Examiner is also reminded that “[the] identical invention must be shown in as complete detail as is contained in the ... claim.” MPEP 2131 quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Applicants submit that Fitzgerald does not teach each and every element as set forth in the rejected claims. In particular:

Claim 1

A. Applicants submit that Fitzgerald does not disclose, suggest or teach, *inter alia*, the following features recited by Claim 1 of the present application:

“an absorbent sandwiched between a body fluid permeable surface member and a body **fluid impermeable back member**” (emphasis added)

The Examiner asserts that “a body fluid permeable surface member” as recited in Claim 1 is disclosed by Fitzgerald’s sheet “34.” See page 2, last line to page 3, line 1 of the Official Action. The Examiner also asserts that the “absorbent” as

recited in Claim 1 is disclosed by Fitzgerald's core "12." See page 3, line 1 of the Official Action.

However, Applicants submit that the Examiner failed to comply with 37 C.F.R. §1.104(c)(2) which states:

"In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes invention other than that claimed by Applicant, **the particular part relied on must be designated as nearly as practicable**. The pertinence, if not apparent, must be clearly explained and each rejected claim specified" (emphases added).

Applicants submit that the Examiner has failed to "designate as nearly as practicable" where Fitzgerald discloses the "fluid impermeable back member" as recited in Claim 1.

Applicants submit that the reasons the Examiner has not designated "as nearly as practicable" where Fitzgerald discloses the "fluid impermeable back member" as recited in Claim 1 was because Fitzgerald does not disclose the "fluid impermeable back member" as recited in Claim 1. According to Fitzgerald, the core "12" is **wrapped** all the way around by the sheet "34." See figure 3 and column 4, lines 10-11 of Fitzgerald.

Is it the Examiner's position that the sheet "34," which allegedly teaches a "body fluid permeable surface member" as recited in Claim 1, also discloses the "fluid impermeable back member" as recited in Claim 1? If this is the Examiner's position, how can the same sheet "34" be both "permeable" and "impermeable"?

Applicants respectfully submit that Fitzgerald does not teach, disclose or suggest "the fluid impermeable back member" as recited in Claim 1, because Fitzgerald, the core "12" is **wrapped** all the way around by the sheet "34," which is alleged by the Examiner to be permeable. Hence, Claim 1 is patentable over Fitzgerald and should be allowed by the Examiner. Claims 2-7, 9, 12 and 14-17, at least based on their dependency on Claim 1, are also believed to be patentable over Fitzgerald.

If the Examiner does not agree with Applicants' position, the Examiner is encouraged to comply with 37 C.F.R. §1.104(c)(2) and "designate as nearly as practicable" where Fitzgerald discloses the "fluid impermeable back member" as recited in Claim 1.

B. Applicants submit that Fitzgerald does not disclose, suggest or teach, *inter alia*, the following features recited by amended Claim 1 of the present application:

"wherein said lower layer **extends beyond** an outer edge of said upper layer" (emphasis added)

The Examiner asserts that the "lower layer" as recited in Claim 1 is disclosed by Fitzgerald's layer "16." See page 3, line 2 of the Official Action. The Examiner also asserts that the "upper layer" as recited in Claim 1 is disclosed by Fitzgerald's layer "14." See page 3, line 2 of the Official Action. Applicants respectfully traverse the Examiner's assertion

According to Fitzgerald, the layer "16" is the same size as layer "14." See Figure 1 of Fitzgerald. Because the layer "16" is the same size as layer "14," Fitzgerald does not disclose that "said lower layer **extends beyond** an outer edge of said upper layer" (emphasis added) as recited in Claim 1. Hence, Claim 1 is patentable over Fitzgerald and should be allowed by the Examiner. Claims 2-7, 9, 12 and 14-17, at least based on their dependency on Claim 1, are also believed to be patentable over Fitzgerald.

35 U.S.C. §102(b) rejection in view of Cole (EP 0613671)

Claim 1 stands rejected under 35 U.S.C. §102(b) as being anticipated by Cole. Applicants respectfully disagree.

Applicants submit that Fitzgerald does not teach each and every element as set forth in the rejected claims. In particular:

Claim 1

Applicants submit that Cole does not disclose, suggest or teach, *inter alia*, the following features recited by amended Claim 1 of the present application:

“wherein said lower layer **extends beyond** an outer edge of said upper layer” (emphasis added)

The Examiner asserts that the “lower layer” as recited in Claim 1 is disclosed by Cole’s layer “106.” See page 4, line 6 of the Official Action. The Examiner also asserts that the “upper layer” as recited in Claim 1 is disclosed by Cole’s layer “108.” See page 3, lines 5-6 of the Official Action. Applicants respectfully traverse the Examiner’s assertion

According to Cole, the layer “106” is the same size as layer “108.” See Figure 1 of Cole. If the Examiner attempts to use Cole’s Figure 4 to assert that the layer “106” extends beyond the layer “108,” Applicants respectfully submit that it is a layer “114” that is folded around the layer “106” that makes it look like layer “106” extends beyond the layer “108.” In actuality, without the layer “114”, the layer “106” is the same size as layer “108.”

Because the layer “106” is the same size as layer “108,” Cole does not disclose that “said lower layer **extends beyond** an outer edge of said upper layer” (emphasis added) as recited in Claim 1. Hence, Claim 1 is patentable over Cole and should be allowed by the Examiner.

35 U.S.C. §103(a) Rejection

Claims 10-11 and 13 stand rejected under 35 U.S.C. §103(a) as being obvious in view of Fitzgerald.

Applicant submits that Claims 10-11 and 13, at least based on their dependency on Claim 1, are believed to be patentable over Fitzgerald, because there is no prima facie 35 USC 103(a) case based on Fitzgerald, as shown above.

Conclusion

In view of the above, reconsideration and allowance of all the claims are respectfully solicited.

The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 12-0415. In particular, if this response is not timely filed, then the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136 (a) requesting an extension of time of the number of months necessary to make this response timely filed and the petition fee due in connection therewith may be charged to deposit account no. 12-0415.

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